

Daniel Cooper (State Bar No. 153576)
Drevet Hunt (State Bar No. 240487)
LAWYERS FOR CLEAN WATER, INC.
1004 A O'Reilly Avenue
San Francisco, California 94129
Telephone: (415) 440-6520
Facsimile: (415) 440-4155
e-mail: cleanwater@sfo.com, drev@lawyersforcleanwater.com

Christopher Sproul (State Bar No. 126398)
ENVIRONMENTAL ADVOCATES
5135 Anza Street
San Francisco, California 94121
Telephone: (415) 533-3376
Facsimile: (415) 561-2223(415) 358-5695
e-mail: csproul@enviroadvocates.com

Counsel for Plaintiff
KLAMATH RIVERKEEPER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KLAMATH RIVERKEEPER, a project of the
Klamath Forest Alliance, a non-profit public
benefit corporation organized under the laws of
the State of California,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, STEPHEN L.
JOHNSON, as Administrator of the United States
Environmental Protection Agency, and WAYNE
NASTRI, as Regional Administrator of the United
States Environmental Protection Agency, Region
9,

Defendants.

Case No. 3:07-cv-03908-WHA

**JOINT CASE MANAGEMENT
STATEMENT FOR MAY 8, 2008 CASE
MANAGEMENT CONFERENCE**

Fed. R. Civ. P. 16 and Civil L.R. 16-10(d)

Judge: Honorable William H. Alsup

Date: May 8, 2008

Time: 11:00 a.m.

Place: Courtroom 9, 19th Floor

1 Plaintiff Klamath Riverkeeper and Defendants United States Environmental Protection Agency,
2 Stephen Johnson, and Wayne Natri (“Defendants” or “EPA” or “Agency”) hereby file this Joint Case
3 Management Statement pursuant to Civil Local Rule 16-10(d) to update the Court on the current status
4 and potential dismissal of this case in anticipation of the case management conference scheduled for
5 May 8, 2008.

6 **1. Background**

7 On July 30, 2007, Plaintiff Klamath Riverkeeper filed the instant action against EPA,
8 challenging the Agency’s decision not to disapprove the State of California’s decision not to list the
9 Klamath River and its reaches that include the Iron Gate and Copco Dam reservoirs as impaired due to
10 *Microcystis aeruginosa* (“blue green algae”) and microcystin toxin in the 2006 Clean Water Act
11 Section 303(d) List of Water Quality Limited Segments for California (“2006 303(d) List”). See
12 Compl. ¶ 1, DE #1.

13 On December 6, 2007, the Court entered a Case Management Scheduling Order setting a
14 summary judgment briefing and hearing schedule for the case, with Plaintiff’s motion for summary
15 judgment due December 20, 2007 and EPA’s opposition and counter-motion for summary judgment
16 due January 31, 2008. See DE #28. After Plaintiff filed its motion for summary judgment but before
17 EPA filed its opposition and counter-motion for summary judgment, EPA determined that a
18 reconsideration of its decision not to disapprove the State of California’s decision not to list portions of
19 the Klamath River that include the Iron Gate and Copco Dam reservoirs as impaired due to microcystin
20 toxin was warranted. See DE #33. The parties subsequently filed a stipulation and proposed Stipulated
21 Order to remand the challenged microcystin toxin listing decision to EPA for reconsideration, to vacate
22 the scheduled summary judgment briefing and hearing dates, and to stay the case ninety (90) days to
23 allow EPA sixty days (60) days to reconsider and issue a new decision and to allow thirty (30) days for
24 public comment on that listing decision. See id. On January 22, 2008, the Court entered the parties’
25 proposed Stipulated Order and set a case management conference for May 8, 2008. See DE #34.

26 **2. Remand Status**

27 On March 13, 2008, EPA withdrew its prior approval of, and disapproved, the State of
28 California’s decision not to include the “Klamath River HU, Middle HA, Oregon to Iron Gate”

segment of the Klamath River, which includes the Copco and Iron Gate Dam reservoirs, on the state's 2006 303(d) List as impaired due to elevated concentrations of microcystin toxin. See Ex. 1 ("March 13, 2008 Disapproval"). In particular, EPA identified for inclusion on the state's 2006 303(d) List "microcystin toxins" as an additional cause of impairment for the "Klamath River HU, Middle HA, Oregon to Iron Gate" segment. Id. On March 27, 2008, EPA published in the Federal Register a Notice of Availability and Opportunity to Comment on the Agency's decision. See Ex. 2 ("March 27, 2008 Federal Register Notice"). The public comment period for this decision closes on April 28, 2008. See id. EPA anticipates completing its review of those public comments and, as appropriate, issuing a revised decision in light of those comments, by May 30, 2008, but may need additional time, depending on the type and quantity of public comments received.

3. Settlement and Proposed Schedule

In light of EPA's March 13, 2008 decision, the parties have agreed to engage in good faith settlement efforts to resolve the issues in this case. Accordingly, the parties jointly propose that the case be stayed until June 12, 2008 to allow EPA time to complete its public comment review and to allow the parties sufficient time to conduct settlement negotiations. In the event that private settlement of the case becomes unlikely, the parties will request at the June 12, 2008 case management conference that the case be referred to ADR with Daniel Bowling as a mediator (who previously worked with the parties in settlement of this case) or propose a schedule for the Court to brief and resolve the remaining issues in the case.

Dated: April 25, 2008

/s/
Christopher Sproul
Attorney for Plaintiff
KLAMATH RIVERKEEPER

Dated: April 25, 2008

/s/ Rochelle L. Russell
ROCHELLE L. RUSSELL
Attorney for Defendants
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, STEPHEN
JOHNSON, and WAYNE NASTRI

1 I, Christopher Sproul, attest that the content of this document is acceptable to all persons
2 required to sign this document.

3 Date: April 25, 2008

4 /s/
Christopher Sproul
Attorney for Plaintiff
5 KLAMATH RIVERKEEPER
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28